



1 pursuing a refund claim in the Arizona Tax Court and included this claim filed with the Department in a  
2 second amended complaint filed with the Tax Court on July 18, 1989. On April 11, 1990, Bohn, et al filed  
3 a second amended and restated class refund claim with the Department that included approximately  
4 4,823 additional individually-named taxpayers, on behalf of themselves and all retired federal employees  
5 for the years 1984 through 1988. At the time of the receipt of this amended and restated class refund  
6 claim, the Department had taken no action on the Bohn, et al or the related refund claims.<sup>1</sup> The  
7 Department accepted this refund claim as a timely filed claim for Bohn, et al and the specifically named  
8 taxpayers for the years 1985 through 1988 and has paid, or is in the process of paying, refund to those  
9 persons of taxes paid on federal pensions for the years at issue.

10 Appellants were not among the individually-named taxpayers, and the Department has denied  
11 their claims for refund. Appellants concede that they did not file individual refund claims within the  
12 applicable statute of limitations. However, they argue that the statute of limitations was tolled by the filing  
13 of a class refund claim on behalf of all retired federal employees; therefore, their claims are timely and  
14 they are entitled to refunds of the tax paid on their retirement benefits.

15 After unsuccessfully protesting the denial of their refunds to the Department, Appellants now  
16 appeal to this Board.

17 DISCUSSION

18 The issues before the Board are as follows: 1) Whether a valid class claim was filed on behalf of  
19 Appellants; if so, 2) whether the class claim tolled the four-year statute of limitations<sup>2</sup>; 3) when the tolling  
20 began and ended; and 4) whether Appellants refund claims were timely under the tolled statute.

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24 <sup>1</sup> Counsel filing the claims at all times stated to the Department that the claims were filed as protective claims only  
25 and that the Department should not act on them since the Department lacked jurisdiction to resolve their dispute.

<sup>2</sup> A.R.S. §§ 42-1106 and 1104.

1 The Department contends that no valid class refund claim has been filed in this matter; therefore,  
2 Appellants are not entitled to refunds because they failed to timely file individual, written refund claims.<sup>3</sup>

3 The Board disagrees.

4 The Arizona Supreme Court has determined that it is proper to use the class device as a vehicle  
5 for bringing and exhausting administrative remedies and that it is unnecessary for each taxpayer to file an  
6 individual administrative refund claim with the Department in order to participate in a class action refund  
7 claim. *Arizona Dep't of Rev. v. Dougherty*, 29 P.3d 862, 200 Ariz. 515 (2001) ("*Ladewig*<sup>4m</sup>"),

8 After reviewing the complicated procedural history of this case, and in light of the clear ruling in  
9 the *Ladewig* decision, the Board finds that a valid class action administrative refund claim was filed on  
10 behalf of Appellants when Bohn, et al filed the second amended complaint with the Arizona Tax Court, on  
11 July 18, 1989.<sup>5</sup> Appellants may argue that the June 22, 1989 claim filed with the Department constitutes  
12 the class refund claim, however, it is the tax court – and not the Department or this Board – that is  
13 authorized to certify a class action under *Ladewig*. Although the tax court denied class certification in the  
14 Bohn, et al case at that time<sup>6</sup>, and the case was ultimately dismissed for failure to exhaust administrative  
15 remedies<sup>7</sup>, this occurred before the *Ladewig* decision clearly settled these issues.

16 The *Ladewig* decision also settles the tolling issue in this case. As the Court noted, if a claimant  
17 is allowed to exhaust administrative remedies on behalf of a similarly-situated class, then tolling of the  
18 statute of limitations should receive similar treatment. Thus, "taxpayers whose claims were not barred by  
19 the statute of limitations, and who therefore could have filed separate, individual administrative refund  
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22 <sup>3</sup> A.R.S. § 42-1118(E).

23 <sup>4</sup> Referred to herein as "*Ladewig*" for the Estate of Helen H. Ladewig on whose behalf the suit was originally brought.

24 <sup>5</sup> The Tax Court complaint included the refund claim filed with the Department on June 22, 1989, which asserted a  
class claim on behalf of all retired federal employees for the years 1984 through 1988.

25 <sup>6</sup> *Bohn v Waddell*, 164 Ariz. 74, 790 P.2d 772 (Tx. Ct. 1990).

<sup>7</sup> *Bohn v. Wadell*, 848 P.2d 324 (Ariz. App. 1992).

1 claims at the time [taxpayers] filed [their] representative claim, and whose administrative remedies were  
2 therefore preserved by [taxpayers'] filing, are not barred by the statute of limitations . . . .” *Id.*

3 Having determined that the complaint filed with the tax court on July 18, 1989 qualifies as a valid  
4 class refund claim in this matter, the Board, accordingly, concludes that this date began the tolling of the  
5 statute of limitations.

6 Appellants argue that the tolling ended on July 23, 1993, with an administrative act when the  
7 Department issued Income Tax Ruling (“ITR”) 93-15, which acknowledged that federal taxpayers who  
8 were taxed on their retirement benefits by the Department paid tax in excess of the amount actually due.  
9 However, the Board finds that the tolling ended with a judicial decision when the Arizona Court of Appeals  
10 dismissed the Bohn, et al case on September 29, 1992.<sup>8</sup> *Bohn*, 848 P.2d 324 (Ariz. App. 1992). Thus, the  
11 statute of limitations was tolled for a total of 1169 days.

12 Attached is a list of the individual Appellants involved in this case, the earliest date of their claims  
13 for refund based on all the records reviewed by the Board, the years for which they claim refunds and the  
14 years for which they are entitled to refunds taking into consideration the 1169 days of tolling.

15 CONCLUSIONS OF LAW

- 16 1. A valid class refund claim was filed on behalf of Appellants.  
17 2. The class refund claim tolled the four-year statute of limitations.  
18 3. The tolling began on July 18, 1989 and ended September 29, 1992.  
19 4. Appellants refund claims were filed timely or untimely for specified years under the tolled  
20 statute as indicated in the attachment.

21 ORDER

22 THEREFORE, IT IS HEREBY ORDERED that the appeals are granted in full or part and the final  
23 orders of the Department in these cases are modified or vacated accordingly, with the exception of  
24

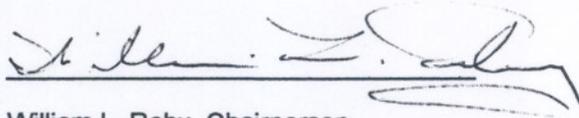
25 \_\_\_\_\_  
<sup>8</sup> The tolling of the statute of limitations ends with a court’s dismissal of the class action even if the dismissal is on appeal. See *Armstrong v. Martin Marietta Corp.*, 138 F.3d 1374 (11<sup>th</sup> Cir. 1998) (en banc).

1 Appellant Harley D. Spencer, whose appeal is denied and whose final order from the Department is  
2 upheld.<sup>9</sup>

3 This decision becomes final upon the expiration of thirty (30) days from receipt by the taxpayer,  
4 unless either the State or taxpayer brings an action in superior court as provided in A.R.S. § 42-1254.  
5

6 DATED this 16th day of December, 2003.

7 STATE BOARD OF TAX APPEALS

8  
9 

10 William L. Raby, Chairperson

11 WLR:ALW

12 CERTIFIED

13 Copies of the foregoing  
14 Mailed or delivered to:

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25 <sup>9</sup> Harley D. Spencer was the final Appellant to file an appeal with the Board in this case, and Appellants' counsel chose to pursue this consolidated appeal under his name. However, Mr. Spencer did not file his appeal with the Department until January 28, 1997 — outside the statute of limitations as tolled by the 1992 *Bohn* decision. Therefore, his appeal is denied in full. The Board rejects counsel's argument that the Department was given notice of a claim for Mr. Spencer by a March 1, 1994 court filing.

ATTACHMENT

Notice of Decision  
Docket No. 1867-01-I

	<u>Name and Docket Number</u>	<u>Earliest Claim Date</u>	<u>Years Claimed</u>	<u>Years Granted</u>
1				
2	Raymond & Joan Schnabel	11/20/93	1985 - 1988	1986,1987,1988
3	1251-94-I			
4	Richard & Hazel Sellers	12/20/93	1985 - 1988	1986,1987,1988
	1292-94-I			
5	Frank & Cecile Moore	4/5/94	1985 - 1988	1986,1987,1988
6	1407-95-I			
7	Dudley & Meryle Williams	8/20/93	1986 -1988	1986,1987,1988
	1414-95-I			
8	Helen Preston	8/25/93	1985 - 1988	1986,1987,1988
	1362-94-I			
9	Richard & Vernetta Godbehere	1/27/94	1985 -1988	1986,1987,1988
10	1359-95-I			
11	Manuel & Carolina Ramirez	12/27/93	1987 - 1988	1987,1988
	1240-94-I			
12	Pauline & James (dec'd) Holley	1/21/94	1985 - 1986	1986
	1183-94-I			
13	Lena Kurc	12/1/93	1985 - 1988	1986,1987,1988
14	1272-94-I			
15	Harold & Lois Hamer	12/4/93	1985 - 1988	1986,1987,1988
	1281-94-I			
16	Mabelle White (dec'd)	5/11/94	1987 - 1988	1987, 1988
17	Jean Ritenour (PR)			
	1674-97-I			
18	Solon & Danny Cunningham	12/1/93	1985 - 1988	1986, 1987, 1988
	1293-94-I			
19	Marion Hoon	11/26/93	1985 - 1988	1986,1987,1988
20	1299-94-I			
21	Thomas & Anna Just	9/28/93	1985 -1988	1986,1987,1988
	1205-94-I			
22	Alice Harris	7/27/93	1985 - 1988	1986,1987,1988
	1298-94-I			
23	Cloyd (dec'd) & Irene Graybill	5/30/94	1985 - 1986 <sup>10</sup>	1986
24	1332-94-I			

<sup>10</sup> These Appellants claimed refunds for tax years 1985 - 1988 on the Notice of Appeal form filed with the Board, but a review of the records indicate that Appellants failed to properly claim refunds for 1987 and 1988 before the Department.

Notice of Decision  
Docket No. 1867-01-I

1	William & Vera Shawver 1311-94-I	11/16/93	1985 - 1988	1986,1987,1988
2	Anne Sumpter 1297-94-I	12/13/93	1985 - 1988	1986,1987,1988
3				
4	Charles & Dorothy Bianco 1310-94-I	1/10/94	1985 - 1988	1986,1987,1988
5	Billy & Bettie Harris 1341-94-I	2/23/94	1985 - 1988	1986,1987,1988
6				
7	Jimmie & Beverly Sonnier 1317-94-I	3/4/94	1985 - 1988	1986,1987,1988
8	Robert & Jane Milligan 1351-95-I	3/11/94	1985 - 1988	1986,1987,1988
9	Robert & Patricia Crain 1340-94-I	1/11/94	1985 - 1988	1986,1987,1988
10				
11	Frank & LaVae Wight 1451-95-I	11/16/93	1986 - 1988	1986,1987,1988
12	Rodney & Margaret Huffine 1361-95-I	5/16/94	1985 - 1988	1986,1987,1988
13	Leonard & Annette Kelly 1353-95-I	2/28/94	1987 - 1988	1987,1988
14				
15	Francis & Dorothy Flood 1343-95-I	6/24/94	1985 - 1988	1986,1987,1988
16	Arne & Virgie Lahti 1383-95-I	4/11/94	1985 - 1988	1986,1987,1988
17				
18	George Wheeland 1376-95-I	3/25/94	1985 - 1988	1986,1987,1988
19	Joseph & Joann Anderson 1358-95-I	3/18/94	1985 - 1988	1986,1987,1988
20	Albert & Bettie Crawford, Jr. 1360-95-I	2/2/94	1985 - 1988	1986,1987,1988
21				
22	Doris Anderson aka Prickett 1357-95-I	5/16/94	1985 - 1988	1986,1987,1988
23	Franklin & Janet Mastin 1385-95-I	3/14/94	1985 - 1988	1986,1987,1988
24	James & Hazel Hall 1391-95-I	2/25/94	1985 - 1988	1986,1987,1988
25	Ira & Betty Milliorn 1375-95-I	4/15/94	1985 - 1988	1986,1987,1988

1	Aubrey & Martha (dec'd) Allison 1370-95-I	6/10/94	1985 - 1988	1986,1987,1988
2				
3	George & Donna Monthan 1389-95-I	4/28/94	1985 - 1988	1986,1987,1988
4	James & Martha Landers 1378-95-I	3/26/94	1985 - 1988	1986,1987,1988
5				
6	Leonard & Patricia Wilson 1296-94-I	11/30/93	1985 - 1988	1986,1987,1988
7	Charles & Gerda Zenith 1382-95-I	9/14/94	1987	1987
8	Frank & Esther Barrett 1392-95-I	8/2/93	1985 - 1988	1986,1987,1988
9				
10	Christina & William (dec'd) Smart 1405-95-I	5/9/94	1985 - 1988	1986,1987,1988
11	George & Star Haarmann 1408-95-I	11/30/93	1985 - 1988	1986,1987,1988
12	Herbert & Yu Yin Wilkins 1413-95-I	3/17/94	1985 - 1988	1986,1987,1988
13				
14	Jean & Conrad (dec'd) Lips 1420-95-I	1/11/94	1987 - 1988	1987,1988
15	Emmerich & Rosemary Hoegg 1424-95-I	2/28/94	1985 - 1988	1986,1987,1988
16				
17	Abe & Katie Wells 1439-95-I	5/16/94	1985 - 1988	1986,1987,1988
18	Shirley Kent 1309-94-I	10/25/93	1987 - 1988	1987,1988
19	Frank & Nancy Plencner 1440-95-I	12/16/93	1985 - 1988	1986,1987,1988
20				
21	James Boggs 1463-95-I	11/9/94	1985 - 1988	1987,1988
22	Shielee & Ralph Padilla 1464-95-I	3/30/94	1987 - 1988 <sup>11</sup>	1987,1988
23	Theresa & Edward McKeen 1471-95-I	7/14/94	1985 - 1988	1987,1988
24				
25				

<sup>11</sup> These Appellants claimed refunds for tax year 1987 only on the Notice of Appeal form filed with the Board, but a review of the records indicate that Appellants also claimed a refund for 1988 before the Department.

Notice of Decision  
Docket No. 1867-01-1

1	Gladys Robins 1472-95-1	1/24/94	1986 - 1988	1986,1987,1988
2	Beatrice (dec'd) & Richard Green ✓ 1329-94-1	1/17/94	1985 - 1988	1986,1987,1988
3				
4	S.W. & Susan Woodward ✓ 1469-95-1	11/30/93	1985 - 1988	1986,1987,1988
5	Fred & Alice Burkhart 1483-95-1	1/31/94	1985 - 1988	1986,1987,1988
6				
7	Rose Berry 1485-95-1	9/23/94	1985, 1986, 1988	1988
8	Edward & Joyce Moore 1531-95-1	1/10/95	1985 - 1988	1987,1988
9	Harlyn (dec'd) & Marilyn Gorkowski ✓ 1204-94-1	4/10/91	1985	1985
10				
11	Hilton & Josephine Reid ✓ 1557-95-1	1/10/94	1985 - 1988	1986,1987,1988
12	Olive Boyle 1561-95-1	3/31/94	1986 - 1988	1986,1987,1988
13	David & Marie Bell ✓ 1595-96-1	8/23/94	1987 - 1988	1987,1988
14				
15	Harley Spencer, II 1867-01-1	9/17/96	1985 - 1988	None
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